

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kim Mosolf	Team: Team # 5	CCRB Case #: 200207701	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 11/06/2002 11:00 PM	Location of Incident: § 87(2)(b)	Precinct: 07	18 Mo. SOL 5/6/2004	EO SOL 5/6/2004	
Date/Time CV Reported Fri, 11/08/2002 11:49 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/15/2002 3:06 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Frank Francisco	12303	928312	PSA 4
2. POM John Villanueva	31281	920943	PSA 4
3. POM Timothy Skretch	02991	926130	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Robert Cardona	26607	928019	PSA 4
2. POF Jacquel Cifuentes	07002	928073	PSA 4
3. LT Michael Molinari	00000	899615	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Francisco	Discourtesy: PO Frank Francisco spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
B.POM Frank Francisco	Abuse: PO Frank Francisco threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.POM Frank Francisco	Force: PO Frank Francisco used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Timothy Skretch	Force: PO Timothy Skretch used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM John Villanueva	Force: PO John Villanueva used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM John Villanueva	Abuse: PO John Villanueva put his hands into § 87(2)(b)s underwear.	§ 87(2)(b)

Synopsis

On November 6, 2002 at approximately 11:00 PM, § 87(2)(b) emerged from a bodega to find PO Frank Francisco of PSA4 issuing his car a parking summons in front of § 87(2)(b) in Manhattan. The two began arguing and PO Francisco allegedly made several discourteous remarks to § 87(2)(b) (Allegation A) and threatened to arrest him (Allegation B). PO Francisco then attempted to arrest him and was aided by PO Timothy Skretch and PO John Villanueva, also from PSA4, who had coincidentally been in the area. These officers allegedly threw § 87(2)(b) up against a gate and handcuffed him (Allegations C, D, and E). Finally, § 87(2)(b) alleged that PO Francisco (later determined to be PO Villanueva) searched him by going into his underwear and touching his buttocks inappropriately.

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

Complainant/Victim: § 87(2)(b)

§ 87(2)(b) made his initial complaint with IAB on November 8, 2002 (Encs. 5a-b, 6a-b).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) was interviewed at the CCRB on November 19, 2002 at the CCRB (Enc. 8a-e). On November 6, 2002 at approximately 11:15 PM, § 87(2)(b) was parked illegally, blocking a driveway, at the intersection of § 87(2)(b), in front of a bodega. He had been inside the store and returned to find a police van and a small police traffic vehicle parked near his car. There was a male and female officer in the van, later identified as PO Cardona and PO Cifuentes. A male officer, later identified as PO Frank Francisco, was using the traffic vehicle. § 87(2)(b) approached and asked if there was a problem.

PO Francisco told § 87(2)(b) that he was getting a ticket for parking near a fire hydrant § 87(2)(b) claimed that the fire hydrant was at least fifteen feet from his car, but he did admit that he was blocking a driveway). § 87(2)(b) asked if the officer had already started the ticket and PO Francisco confirmed that he had and asked § 87(2)(b) to step aside. § 87(2)(b) complied and was quiet. PO Francisco finished writing the ticket and § 87(2)(b) asked him if he could move the car and PO Francisco replied, "You move the car when I fucking tell you to move it."

§ 87(2)(b) told PO Francisco, "Alright then, I could just leave it here because there is a 24 hour window until you can write another ticket?" PO Francisco replied, "If you leave it here, I will tow this piece of shit." PO Francisco paused and looked at § 87(2)(b) before saying, "You know what it is? You think you're tough." § 87(2)(b) replied, "If you say so." PO Francisco then told him, "You know what? One more word out of your face and I'm going to arrest you." When § 87(2)(b) asked what he would be arrested for, the officer told him "disorderly conduct." § 87(2)(b) told PO Francisco that he was the one that was screaming and cursing and the officer dared him to say one more thing. § 87(2)(b) then told him that he had the right to free speech, to which PO Francisco replied, "Oh, you have free speech?" while pulling out his handcuffs. § 87(2)(b) clarified that he was only directing his words towards PO Francisco.

PO Cardona and PO Cifuentes had been watching from approximately ten feet away.

§ 87(2)(b) told PO Francisco to "do me a favor and get out of my face." PO Francisco asked, "Who's going to make me?" § 87(2)(b) and PO Francisco went back and forth with the same sort of talk and finally § 87(2)(b) told PO Francisco, "You know what? Since you're so disrespectful, I'm just going to tell you to go fuck yourself. Now what?"

PO Francisco grabbed § 87(2)(b)'s hands slammed him into a gate, lifting his arms up high behind his back, causing § 87(2)(b) pain. PO Francisco then put his hands onto his head and pushed his head into a black gate. § 87(2)(b) started screaming and people gathered to watch and an unidentified officer

handcuffed him. PO Francisco began searching him, putting his hands inside of § 87(2)(b)'s underwear and "grabbed my ass", but did not put his fingers inside of § 87(2)(b). This caused § 87(2)(b) to "flip out," and PO Francisco called for back up. § 87(2)(b) was not being physically threatening, but was screaming and "flipped so much that I couldn't believe how much violence....I don't know, I was capable of doing anything to that officer." § 87(2)(b) stated that he was so upset that he did not even care about his life. He stated that, after he was handcuffed, he told PO Francisco, "You're a bitch ass motherfucker and if I'd had a gun, I would have shot your stupid ass." PO Francisco was also "talking shit" back to § 87(2)(b).

A supervising officer whom other officers called "sergeant," later identified as Lt. Molinari, arrived after § 87(2)(b) was handcuffed and searched and was telling § 87(2)(b) to calm down and relax. No back up officers arrived to witness the handcuffing and search of § 87(2)(b).

§ 87(2)(b) was still very upset from the search and kept yelling, "Get the fuck away from me, motherfuckers." A crowd had gathered and somebody threw a brick. Officers were telling the Lt. Molinari, "Sergeant, they're running around. They're going to do something. We've got to evacuate and leave this neighborhood quickly."

Officers put § 87(2)(b) into the back of the van that was there originally and drove away to "the 9th Precinct, PSA 4". People were still throwing bottles and rocks. Back at the station house, § 87(2)(b) was still upset, especially when PO Francisco tried to process him, so someone else processed him. He was arrested § 87(2)(b), to the best of § 87(2)(b)'s knowledge.

Results of Investigation

Witnesses

§ 87(2)(b) stated that two of his friends, § 87(2)(b) and § 87(2)(b) were present during this incident. § 87(2)(b) was contacted and made an appointment, which he missed. He did not respond to further attempts to contact him.

§ 87(2)(b) reported that the incident happened at the corner of § 87(2)(b), in front of the bodega. It was only later, after interviews with the involved officers, that it became clear that the incident occurred at § 87(2)(b) a couple of blocks away from § 87(2)(b)'s reported location. The undersigned investigator had already performed a canvass at § 87(2)(b) and sent letters to the § 87(2)(b) of the apartment building on the corner. § 87(2)(b), § 87(2)(g)

Witness: § 87(2)(b)

§ 87(2)(b) stated that one of his friends, § 87(2)(b) saw the entire event and spoke to some of the officers. § 87(2)(b) who did not provide any other name, was contacted. He was at first hesitant to become involved and provide any information on himself, but made an appointment, which he missed. He was finally convinced to provide a phone statement.

§ 87(2)(b) was interviewed over the phone on March 20, 2003 (Enc. 9a-b). On November 6, 2002 at approximately 11:00 PM, § 87(2)(b) was coming from a friend's apartment at § 87(2)(b) in Manhattan. As he exited the building, § 87(2)(b) saw his friend, § 87(2)(b). § 87(2)(b)'s car was parked in front of the building. There were a couple of police officers present and § 87(2)(b) was arguing with them. § 87(2)(b) who was waiting to be picked up by another friend, stood and watched from approximately ten feet away.

"Words kept going back and forth" between § 87(2)(b) and the officers, who were writing § 87(2)(b) a summons. Friends of § 87(2)(b) from Brooklyn moved § 87(2)(b)'s vehicle for him. One of the officers, with whom § 87(2)(b) was mainly arguing, was alone and driving one of the traffic scooters (assumed to be PO Francisco). The back up officers had arrived in a van.

It appeared to § 87(2)(b) that PO Francisco and the other officers “wanted to fight” with § 87(2)(b). Another officer asked him what he was doing there and told him that the situation with § 87(2)(b) was none of his business. § 87(2)(b) told one of the officers that what PO Francisco was doing was wrong because § 87(2)(b) had moved his car when PO Francisco asked him. PO Francisco was telling § 87(2)(b) that, if he did not shut up and continued mouthing off, he would be arrested. § 87(2)(b) asked him, “Arrested for what?”

§ 87(2)(b) stated that both § 87(2)(b) and PO Francisco were arguing and that § 87(2)(b) had a “smart mouth,” telling the officer, “Leave me alone, the car’s not hear anymore. Get out of here.” PO Francisco responded, “I don’t have to get out of here. You get out of here.” This argument escalated PO Francisco grabbed him and told him to “Shut the fuck up,” but § 87(2)(b) “started panicking” and “acting up.” This is when approximately two officers helped PO Francisco and they “threw” § 87(2)(b) up against a gate. § 87(2)(b) was struggling with PO Francisco. He did not push PO Francisco, but was throwing his body around and “trying to push the cop away from him.”

When § 87(2)(b) was pushed against the gate, he was screaming, but § 87(2)(b) could not recall what he was saying specifically. § 87(2)(b) had backed away, starting to walk down the block. He saw the officers handcuff him and talk to him, trying to calm him down. Someone threw a bottle from the building and the officers immediately put him in the van. § 87(2)(b) did not see the officers search him, beyond a basic frisk. He did not see them search inside his clothes.

§ 87(2)(b) was still screaming after he was handcuffed and the officers attempted to calm him down for approximately five minutes. The entire incident lasted approximately thirty minutes.

When asked specifically about any cursing he heard, § 87(2)(b) stated that PO Francisco told § 87(2)(b) during the incident, “Shut the fuck up before I arrest you.” § 87(2)(b) had responded, “I don’t have to shut the fuck up.” § 87(2)(b) could not recall anyone making rude comments regarding the car.

Subject Officer: PO Frank Francisco

PO Frank Francisco was interviewed at the CCRB on February 3, 2003 (Enc. 10a-c). On November 6, 2002, PO Francisco worked a 4:00 PM to midnight shift as a Community Patrol Unit. He was working alone, in uniform, and assigned to scooter 9108. PO Francisco stated that the incident location was, in fact, in front of § 87(2)(b) and not the corner of § 87(2)(b), as reported by § 87(2)(b).

At approximately 11:00 PM, PO Francisco was writing a ticket for § 87(2)(b)’s vehicle for parking too close to a fire hydrant. § 87(2)(b) approached from PO Francisco’s back and asked him if it was too late—if he had already finished writing the ticket. PO Francisco told him that it was too late and continued writing. § 87(2)(b) was standing on the other side of the car and became very angry. He told PO Francisco that he would leave his car there, since the ticket had already been written and PO Francisco told him that the car would be towed if it was not moved.

§ 87(2)(b) began cursing, saying “fuck you,” along with other such phrases. While this was going on, two other officers from PO Francisco’s command were watching: PO Cardona and PO Cifuentes. § 87(2)(b) continued yelling and cursing, telling PO Francisco, “You think you guys are tough because you’re cops? You think you have guns? I have more guns than you.” PO Francisco, who stated that he did not curse or raise his voice throughout this entire encounter, told § 87(2)(b) that he would have to calm down or risk being arrested for disorderly conduct. He warned him several times, but § 87(2)(b) continued yelling and cursing, also moving his arms around in an agitated fashion. PO Francisco was alarmed by § 87(2)(b)’s behavior, so, instead of approaching him initially to hand him the ticket, he placed it on the windshield of the car.

When § 87(2)(b) would not calm down despite repeated warnings, however, PO Francisco did approach within a few feet of § 87(2)(b) and told him to turn around because he was under arrest. Lt. Molinari, PO Villanueva, and PO Skretch just happened to pass by in a van at this point and stopped to help. § 87(2)(b) became upset that PO Francisco was standing close to him, yelling at him to get out of his face and continuing to curse. PO Francisco made numerous attempts to get hold of § 87(2)(b)’s arms to handcuff

him, but § 87(2)(b) continued moving his arms around and resisting. PO Cardona, PO Villanueva, and PO Skretch became involved, helping to get § 87(2)(b) against a wall and move his arms behind his back. Lt. Molinari acted as “a mediator,” trying to get § 87(2)(b) to calm down, and PO Cifuentes stood to the side. PO Francisco was then able to handcuff § 87(2)(b) with help from the other officers. He never witnessed any officer push § 87(2)(b) into the wall, although the officers did have to use pressure to get him against the wall, as he was struggling with them.

PO Francisco did not search § 87(2)(b). He believed that PO Villanueva or PO Skretch might have done so, but he did not recall witnessing this.

By this time, a large crowd had gathered and someone threw a bottle from § 87(2)(b) § 87(2)(b)'s building. The officers were alarmed by the activity and cleared the area quickly. § 87(2)(b) was transported in the van, driven by PO Villanueva and PO Skretch. At the station house, § 87(2)(b) continued yelling and cursing, threatening to kill PO Francisco and blow up the station house. PO Francisco therefore notified the Threat Assessment Unit and the FBI.

Subject Officer: PO Timothy Skretch

PO Timothy Skretch was interviewed on March 6, 2003 at the CCRB (Enc. 11a-c). On November 6, 2002, PO Skretch worked a 3:00 PM to 11:35 PM shift assigned to Anti-Crime for PSA 4. He was in plainclothes and working with PO Villanueva and Lt. Molinari in an unmarked van.

At approximately 11:30 PM, PO Skretch was patrolling the LaGuardia public housing projects. On the corner of § 87(2)(b), just north of § 87(2)(b) approximately five car lengths, he observed PO Francisco issuing a summons to a vehicle. The owner, § 87(2)(b) approached PO Francisco and PO Skretch saw them “getting close to each other” and § 87(2)(b) yelling at the officer in front of § 87(2)(b). PO Villanueva, who was driving, parked nearby and the officers exited the vehicle to make sure that everything was all right.

§ 87(2)(b) was yelling obscenities, telling him, “Write your fucking summons. Who do you think you are? You don’t know who I am.” PO Francisco was telling § 87(2)(b) to stop cursing. PO Skretch did not hear any argument regarding § 87(2)(b)'s car, specifically, he did not hear PO Francisco refer to the car as a “piece of shit.” He never heard PO Francisco curse at § 87(2)(b) in any other manner.

PO Cifuentes and PO Cardona were standing nearby with their marked van, keeping two other individuals, who apparently knew § 87(2)(b) away from the situation. Lt. Molinari was standing to the side verbally attempting to calm § 87(2)(b) down. § 87(2)(b) continued to curse loudly and PO Francisco warned him that he could be arrested for disorderly conduct. § 87(2)(b) told PO Francisco to do what he had to “fucking” do. PO Francisco told § 87(2)(b) to turn around and put his hands behind his back. When he moved to place handcuffs on § 87(2)(b), § 87(2)(b) pushed the officer off of him. PO Skretch and PO Villanueva then stepped in and told him to place his hands up against the fence that was behind him, to which he complied. He continued shouting the whole time, but did not physically resist. They then held his arms behind his backs while PO Francisco handcuffed him. PO Skretch and PO Villanueva patted him down before placing him in PO Cifuentes’s marked vehicle for transport. The officers did not go inside his waistband or further into his pants or underwear. He never saw any officer do so. He had no recollection of § 87(2)(b) becoming particularly upset regarding this frisk, stating that § 87(2)(b) was shouting the entire time about being arrested.

§ 87(2)(b) never hit the fence, instead he went willingly against the fence. There was no struggle at all after he pushed PO Francisco. PO Skretch did not recall a crowd gathering, but stated that he remembered hearing a bottle fall out of a nearby window after the arrest was effected.

PO Skretch did not ride back in the same vehicle as § 87(2)(b) but did go back to the station house. When he arrived, § 87(2)(b) was already in the holding cell area. PO Skretch and PO Villanueva attempted to calm him down, as he still seemed very upset. He was calm with PO Skretch, expressing displeasure that PO Francisco had arrested him for no reason. He did not mention feeling upset or violated by a search.

Subject Officer: PO John Villanueva

PO John Villanueva was interviewed at the CCRB on March 6, 2003 (Enc. 12a-d). On November 6, 2002, PO Villanueva worked a 3:00 PM to 11:35 PM shift assigned to an Anti-Crime Unit for PSA 4. He was in plainclothes and assigned to an unmarked van with Lt. Molinari and PO Skretch.

At approximately 11:30 PM, PO Villanueva was driving the unmarked van at the corner of § 87(2)(b) § 87(2)(b), approximately twenty feet from PO Francisco and § 87(2)(b). He observed § 87(2)(b) § 87(2)(b) issuing a parking summons to a Hispanic male, later identified as § 87(2)(b). § 87(2)(b) was “getting irate and moving his hands around.” The officers parked the van and exited to make sure everything was safe.

PO Skretch and PO Villanueva approached and § 87(2)(b) continued screaming at and threatening PO Francisco, yelling, “Give me the fucking summons! Who the fuck are you to come on my block and give me a fucking summons? Next time you come on my block and give me a fucking summons, I’m going to take care of you.” There was no physical contact between PO Francisco and § 87(2)(b) up until this point, and the two men stood approximately three feet from each other. PO Francisco told § 87(2)(b) to calm down and told him that if he continued in this manner he would be arrested. § 87(2)(b) continued to curse and scream. Finally, PO Francisco told § 87(2)(b) to put his hands behind his back, as he was under arrest, and § 87(2)(b) pushed the officer’s hands down and away.

At this point, PO Skretch and PO Villanueva each grabbed one of § 87(2)(b)’s arms and held them so that PO Francisco could handcuff him. He was placed up against a fence and was physically compliant, but continued yelling. He never hit the gate or was pushed up against the gate. Two pairs of handcuffs were needed. Once he was handcuffed, § 87(2)(b) began threatening PO Francisco further, telling him that he was going to put a “bullet in him.” PO Villanueva stated that all of § 87(2)(b)’s threats were directed towards PO Francisco, who just stood there dumbfounded in response. PO Villanueva never heard PO Francisco curse at § 87(2)(b) specifically referring to § 87(2)(b)’s vehicle as a “piece of shit.”

PO Cifuentes and PO Cardona were standing nearby with their marked van. They were making sure that a few of § 87(2)(b)’s friends did not get involved in the situation. Lt. Molinari stood near these two officers and was not physically involved in the arrest.

PO Villanueva frisked § 87(2)(b) quickly and possibly went inside his pockets, but did not go inside his waistband or his pants. He never saw any other officer do so and had no recollection of § 87(2)(b) becoming upset in reaction to the search. PO Villanueva pointed out that § 87(2)(b) was irate the whole time. Approximately three or four people had gathered at the scene.

PO Villanueva transported § 87(2)(b) with PO Cifuentes and PO Cardona. § 87(2)(b) was cursing PO Cardona out in Spanish. At the station house, § 87(2)(b) threatened to blow up the station house.

Witness Officer: PO Jacqueline Cifuentes

PO Jacqueline Cifuentes was interviewed on March 6, 2003 (Enc. 13a-e). On November 7, 2002, PO Cifuentes worked a 3:00 PM to 11:35 PM shift as part of the Conditions Unit for PSA 4. She was in uniform, assigned to a marked van, and working with PO Cardona.

At approximately 11:00 PM in front of § 87(2)(b) in Manhattan, PO Cifuentes, who was parked in the marked van with PO Cardona, noticed that PO Francisco was issuing a summons to a car parked in front of a fire hydrant. She could not estimate how closely she was parked to PO Francisco, but stated that she could clearly see him and what he was doing. The owner of the vehicle, § 87(2)(b) approached. PO Cifuentes observed them arguing.

PO Cifuentes and PO Cardona exited the van. PO Cifuentes stated that § 87(2)(b) wanted to know why he was getting the ticket. He stated to PO Francisco, “Fuck you, go ahead and give me the summons.” PO Cifuentes and PO Cardona were then kept busy by keeping two friends of § 87(2)(b)’s away from the scene. They were trying to become involved and PO Cifuentes, who now had her back to PO Francisco

and § 87(2)(b) instead facing these two men, was explaining to them repeatedly that they could not approach and was keeping her body in the way.

PO Cifuentes stated that PO Skretch and PO Villanueva came onto the scene almost immediately, but she did not observe their interaction with § 87(2)(b) as she was turned around. She stated that she was too busy dealing with the friends, explaining the summons and the car situation, to hear what was occurring with § 87(2)(b). She never witnessed § 87(2)(b) get pushed against a fence or searched. She never heard any officer curse at him, specifically hearing PO Francisco refer to § 87(2)(b)'s car as a "piece of shit."

§ 87(2)(b) was in the marked van that transported § 87(2)(b) back to the precinct station house. She stated that, in the van, § 87(2)(b) was very loud and was threatening to kill the officers if they came to his block. She stated that he did not seem upset about anything in particular, such as a search of his person.

Lt. Michael Molinari and PO Robert Cardona

PO Cardona missed his scheduled appointment and Lt. Molinari was not scheduled, so these two witness officers were not interviewed for this case. § 87(2)(b), § 87(2)(g)

Police Documents

The OLBS for § 87(2)(b) notes that § 87(2)(b) had made several threats against PO Francisco's life, as well as inciting a crowd to prevent his arrest. It also states that § 87(2)(b) attempted to harm PO Francisco and that it took several officers to handcuff him. It notes that physical force was used, but does not note why (Enc. 15). The command log lists § 87(2)(b)'s arrest at 12:25 AM on November 7, 2002. It notes that he was arrested § 87(2)(b)

§ 87(2)(f)

C/V Arrest and Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer CCRB Histories

PO Francisco has been an NYPD officer for a little over a year and this is his first complaint. PO Skretch has been an officer for three years and has not been disciplined as a result of a CCRB case. PO Villanueva has been an officer for five years and has not been disciplined as a result of a CCRB case. (Enc. 4a-c)

Conclusions and Recommendations

Officer Identification

§ 87(2)(b) identified PO Francisco by name. The officer was his arresting officer and admitted to his role in the incident. § 87(2)(b) provided descriptions for PO Cardona and PO Cifuentes, stating that they were on the scene in a marked police van parked nearby. § 87(2)(g)

§ 87(2)(b) stated that there was an officer on the scene whom the others called sergeant and who was telling him to calm down. This is assumed to be Lt. Molinari, the only higher-ranking officer on the scene and, according to several officer statements, the officer who was talking to § 87(2)(b) in an effort to calm him. § 87(2)(b) provided brief descriptions of the other officers.

§ 87(2)(b) stated that it was PO Francisco who slammed him up against the gate. Through the statements of all involved officers and of the witness, § 87(2)(b) it became clear that PO Skretch and PO Villanueva were definitely physically involved in the arrest of § 87(2)(b) § 87(2)(g)

§ 87(2)(b) also claimed that PO Francisco was the officer who went into his underwear and searched him. PO Francisco denied frisking or searching § 87(2)(b) at all and stated that PO Skretch or PO Villanueva might have done so. PO Skretch stated that he and PO Villanueva patted § 87(2)(b) down before placing him in PO Cifuentes's marked vehicle for transport. PO Villanueva stated that it was he who frisked § 87(2)(b) and possibly went inside his pockets, but did not go inside his waistband or his pants. § 87(2)(g)

Established Facts and Issues in Dispute

On November 6, 2002 at approximately 11:00 PM, § 87(2)(b) was issued a summons for a parking violation by PO Frank Francisco in front of § 87(2)(b) in Manhattan. The two men began arguing and this dispute escalated until PO Francisco attempted to arrest § 87(2)(b) for disorderly conduct. Several other officers from the PSA4 command were in the area and aided PO Francisco in arresting § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Credibility

§ 87(2)(b)

§ 87(2)(b) also provided names of two witnesses on the scene.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A) Discourtesy: PO Frank Francisco spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) claimed that PO Francisco told him, "You move the car when I fucking tell you to move it," and "If you leave it [the car] here, I will tow this piece of shit." § 87(2)(b) stated that the officer told § 87(2)(b) to "shut the fuck up," but recalled no specific rude comment made regarding § 87(2)(b)'s vehicle. All officers denied any such discourteous remarks.

§ 87(2)(b), § 87(2)(g). All officers and the witness interviewed attest to the fact that § 87(2)(b) was yelling and cursing. § 87(2)(b) stated that PO Francisco was returning the argument, telling § 87(2)(b) to "shut the fuck up." § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) In his IAB report, he states that the officer was yelling at him and told him, "You don't leave when the fuck you leave. You leave when I tell you." § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B) Abuse of Authority: PO Frank Francisco threatened to arrest § 87(2)(b).

§ 87(2)(b) claimed that PO Francisco told him that he would be arrested for disorderly conduct.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). Even § 87(2)(b) admits to yelling and cursing at PO Francisco, even stating in his IAB interview that he told the officer, “Don’t put your hands on me because I’ll beat your nuts off.” According to all interviewed officers, § 87(2)(b) was making such threats throughout the incident.

A person is guilty of disorderly conduct when, “with intent to cause public inconvenience, annoyance, or alarm...he makes unreasonable noise; in a public space he uses abusive or obscene language, or makes an obscene gesture....,” according to New York Penal Law (Enc. 1).

§ 87(2)(b), § 87(2)(g)

Allegation C) Force: PO Frank Francisco used physical force against § 87(2)(b)

Allegation D) Force: PO Timothy Skretch used physical force against § 87(2)(b)

Allegation E) Force: PO John Villanueva used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Francisco pushed him against the gate and then slammed his head into the gate.

All officers’ involved stated that PO Francisco had attempted to handcuff § 87(2)(b) and, when § 87(2)(b)

§ 87(2)(b) pushed the officer, was aided by PO Skretch and PO Villanueva. These officers pushed § 87(2)(b)

§ 87(2)(b) against the gate and held him there so PO Francisco could handcuff § 87(2)(b)

§ 87(2)(b) stated that PO Francisco grabbed § 87(2)(b) and § 87(2)(b) “started panicking” and “acting up.” This is when the two other officers helped PO Francisco and “threw” § 87(2)(b) up against a gate.

§ 87(2)(b) stated that § 87(2)(b) was struggling with PO Francisco, throwing his body around and “trying to push the cop away from him.”

Police Procedure 203-11 states that an officer may use “only that amount of force necessary to overcome resistance...to effect an arrest” (Enc. 2). § 87(2)(b), § 87(2)(g)

Allegation F) Abuse of Authority: PO John Villanueva put his hands into § 87(2)(b)’s underwear.

A frisk and search is standard procedure, incident to an arrest. § 87(2)(b) however, alleged both in his IAB complaint and his CCRB statement that PO Francisco went into his underwear and felt his buttocks. Police Procedure 208-05 outlines the proper frisk/field search procedure: “A through external body examination is made by sliding the hand over the subject’s body, feeling for weapons or other object, with special attention to the waistband, armpit, collar, and groin areas. If an unusual object is detected, the officer will reach into or under the clothing to remove it.” (Enc. 3)

The officers involved in the case all stated that PO Francisco had not frisked or searched § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(2)(b), § 87(2)(g) [Redacted]
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[Redacted]
[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: